No.

92-1939

In The
Supreme Court Of The United States
October Term, 1993

Supreme Court, U.S.
FILED
JUN 07 1993
OFFICE OF THE CLERK

Z. REYTBLATT,
Petitioner,

v.

U.S. NUCLEAR REGULATORY COMMISSION,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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June 7, 1993

29 pp

QUESTION PRESENTED FOR REVIEW

The question presented is:

Whether the United States Court of Appeals for the Seventh Circuit erred in not considering issues presented for its review that arose from the biased prosecution of the case by the Hon. Kocoras of the Lower Court who permitted severe violations by Defendant and who introduced unusual interpretations of the Federal Rules of Civil Procedure (FRCP).

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Statements Pursuant to Rules 21(d)(e)(f)

The Unpublished Order of the Court of Appeals for the Seventh Circuit dated March 10, 1993, is attached hereto as Appendix B.

The District Court's Order appealed from appears at Appendix A.

The Petition below is filed within ninety (90) days of the final decision of the Appellate Court.

Jurisdiction of this Court is invoked pursuant to this Court's power to review a final decision of a United States Court of Appeals. Jurisdiction is conferred on this court by 28 USC Sec. 1254.

Constitutional Provisions Involved

The due process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States are involved.

The Petitioner was deprived of his right to examine the documents and tangible things, of responses to interrogatories, of examination of key witnesses, and of his right to a trial; the Lower Court refused to institute an investigation of criminal activities of Respondent's Counsel despite a clear *prima facie* evidence.

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Z.REYTBLATT,

Petitioner

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U.S. N.R.C. et al.,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Petitioner, Zinovy V. Reytblatt, respectfully prays that a writ of certiorari issue to review the judgment and order of the United States Court of Appeals for the Seventh Circuit in this matter.

STATEMENT OF THE CASE

This case concerns testing of tightness of containment systems of nuclear power plants. The present methodology of testing allows misrepresentation of abnormally leaking containments as being tight. Petitioner improved the methodology of testing and submitted a proprietary document containing it to the NRC in March, 1983, with clear instructions to observe confidentiality.

The Respondent injured the Petitioner by sending a copy of the document without his knowledge and permission to third parties, and by releasing proprietary matter into the public domain. When the Petitioner complained, the Respondent produced an affidavit alleging that Petitioner verbally agreed to a non-restricted dissemination of his intellectual property.

Among the recipients were a Petitioner's competitor, the Oak Ridge National Laboratory (ORNL), with whom

the Petitioner was in contractual relationship, and even a utility company, Commonwealth Edison of Illinois (ComEd), which sent the illegally obtained document for a review.

Petitioner complained of theft, and the U.S. Federal District Court for Northern District of Illinois, Eastern Division, turned down Respondent's Motion to Dismiss in June, 1986.

Respondent's cover up of faulty and fraudulent testing of nuclear containments became at that time a subject of citizens' lawsuits and complaints to the U.S. Congress. Respondent willfully lied to the Congress of the United States claiming that accusations of inadequate testing would be responded in *Reytblatt v. U.S.A.* although no explanation as to how a theft and a cover up by the US NRC were related, has ever been given. Citizens' correspondence with U.S. N.R.C. was demanded and held by Respondent's Counsel, Wawzenski, for many months.

Respondent has neither responded to Petitioner's interrogatories nor produced documents in July-November, 1986. The Rule 26(f) Conference of December 8, 1986, determined categories of the documents to be produced by Respondent, and clarified how Respondent should have completed interrogatory responses.

Respondent refused to comply with the Court adopted measures despite several Court Orders reiterating these measures. Instead, a perjurous affidavit by Wawzenski that claimed that Respondent had produced documents was submitted to the Court.

On the last day of the Senior Judge McGarr's service his Opinion, based solely on perjurous Wawzenski's affidavit, stated that the document production should be closed.

Petitioner was denied of his right to confront a perjuror

in the open court and of his right to a Rule 26(f) conference by the new Judge Kocoras.

Petitioner sought a permission from the Appellate Court to petition for review from Kocoras' Orders that "closed" the discovery which had not even started. The Appellate Court denied such permission.

Respondent's Counsel, Kinney, with the knowledge and close cooperation of Messrs. Denton, Shomaker, and Mullins of the NRC, and of the former AUSA for Illinois, Foreman, corrupted Petitioner's Agent, Mr. Wolf, and illegally moved a specified by the Court site of deposition of a witness to a "backroom of a bar in Washington."

With the full knowledge, Judge Kocoras refused to investigate these actions and, instead, sanctioned the Respondent by slapping a fine of $500.00. The Judge Kocoras even attempted to install Mr. Wolf as Petitioner's Counsel against Petitioner's will.

The Hon. Kocoras quashed a subpoena of a key witness, Maura, who was subpoenned in accordance with the F.R.C.P. to bring pertinent documents and tangible things in his possession to the site of his deposition. The Court based its Order on the perjury, and on an unprecedented "interpretation" of a Rule 30(b)(5) "assuming" that the "document production" and the "bringing of documents and tangible things for examination to the site of deposition" is the same thing. As a result, Petitioner's Counsel withdrew, and the deposition was postponed.

Petitioner sought a permission from the Appellate Court to appeal from this Order. The permission was denied.

Although the discovery was "closed," the Judge Kocoras permitted the Respondent to examine two secondary witnesses (Gogol and Shomaker) **out of turn** with the understanding that two key witnesses (Maura and Arndt) be examined therafter by Petitioner.

Four postponements of Respondent's witness' depositions were granted by Judge Kocoras on Respondent's motions designed, primarily, to derail depositions of key witnesses, yet the Judge denied Petitioner of examination of a single key witness.

A Sitting Judge (the Hon. Bua) recognized that the preparation of a Final Pretrial Order (FPTO) without a benefit of having key witnesses examined would crucially prejudice Petitioner, and ruled in May 1991 that an FPTO should be prepared **upon examination of witnesses.** Yet the Hon. Kocoras reversed the Order, denied the Petitioner his right to examine witnesses, and demanded that the Petitioner prepare his own version of the FPTO without the benefit of answers to interrogatories, examination of witnesses, and documents in Respondent's possession.

The Respondent submitted an FPTO. In absence of an FPTO submitted by Petitioner, and in absence of Petitioner's objections, the submitted version became the Final Pretrial Order as per Rules by default.

The Hon. Kocoras' threats, diversions from Orders of other (Sitting) Judges, and clear bias caused Petitioner to move for his recusal.

The Hon. Kocoras refused to recuse; however, he promised that Respondent's noncompliance with the discovery requirements would be considered at the trial scheduled for January 1992, to which the Petitioner agreed.

On December 12, 1992, Respondent moved for dismissal based on Petitioner's failure to submit the second version of the FPTO. Petitioner's absense in the courtroom on that day was unavoidable because he was giving an examination that could not be proctored; for that reason Petitioner respectfully moved for continuation by one-two days.

The Hon. Kocoras denied the motion and prematurely

dismissed the case in Petitioner's *absentia*.

In January, 1992, Petitioner timely filed the Petition for Review and, subsequently, the Brief with the United States Court of Appeals for the Seventh Circuit requesting an oral argument.

Respondent moved for leave to continue the filing of his Brief, and extra six weeks for prepation of his Brief were granted on the motion.

Respondent submitted a document that did not comply with the Rules of the Appellate Court in that that it grossly distorted the facts and did not address the issues presented for review. Petitioner's Reply Brief that respectfully requested the Appellate Court to remand the case for Respondent's non-compliance with the Rules has been ignored.

On March 10, 1993, the Appellate Court issued an unpublished Order denying the request for an oral argument and affirming the district court's dismissal.

The Order grossly and willfully distorts the BACKGROUND of the case. The DISCUSSION does not address issues presented for the review. It contains irrelevant quotations and authorities, and it repeats untrue statements of Respondent and of the District Court.

The facts are clear: the NRC and Commonwealth Edison stole Petitioner's intellectual property; for seven years they have been lieing to the United States Congress; for seven years they were blocking discovery; they corrupted and committed perjury, and willfully violated the Federal Rules; the District Court collaborated with the Respondent; the Circuit Judges CUMMINGS, CUDAHY, MANION made a serious, perhaps, unprecedented error by affirming a clearly wrong judgment of the lower court.

REASONS FOR GRANTING THE WRIT

This case needs no fine interpretations of the law.

A group of high officials of the US NRC and of the Department of Justice, the district judge KOCORAS, and the Appellate Judges CUMMINGS, CUDAHY, MANION committed, or acquiesced to committment of, punishable crimes such as:

lieing to the United States Congress;
corrupting agents of the opposing party;
perjury and forgery;
willfull violation of Rules of Civil and Appellate Procedure.

As a result, faulty and fraudulent testing of nuclear containments continued for seven more years to the detriment of public safety;

the Petitioner was deprived of his right to obtain response to interrogatories, of his right to obtain or to examine the documents, his right to examine witnesses, his right to raise questions and to confront perjurors in the open court, his right to obtain a review of criminal actions of counsels of the Respondent; and

the Petitioner was deprived of his right to a fair trial, and of the right to obtain answers to relevant questions presented for review to the Appellate Court.

These questions were whether courts had a duty to compel responses to interrogatories and document production, and a duty to compel witness examination and to allow subpoenas, a duty to consider, under the Rule 60, serious violations of professional ethics; whether court's new interpretation of the Rules 26(f) and 30(b)(5) was consistent with the precedents and should be allowed; and whether a Plaintiff could be denied the trial when he does not object a Defendant's prepared version of Final Pretrial Order while not presenting a separate version.

None of these relevant procedural question have been addressed in the Appellate Court's Order of March 10, 1993.

A failure to grant the writ would mean that the corrupt and criminal governmental officials and their servants in the judicial system have prevailed in robbing an ordinary citizen of the fruit of his labor for his outspokenness on the issue of faulty and fraudulent tests of nuclear containments.

Granting the writ would mean that even such an important litigant as the United States government must comply with the laws, and that the lower courts must be fair and see to it that nobody be above the law and the Constitution of the United States.

OTHER COURTS COMPEL RESPONSES TO INTERROGATORIES

The Respondent consistently refused to respond to interrogatories although the Counsel recognized the duty to respond (March, 1987). Respondent objected to the number and to formulation of interrogatories. Petitioner accomodated the number and formulation of interrogatories to meet these objections. The Court ordered Respondent to prepare the answers. The Respondent frivolously moved to dismiss the lawsuit presenting the same arguments that had already been presented and had been rejected by the Hon. McGarr before. Respondent's motion to dismiss was turned down, however, his response to interrogatories has not been compelled.

In November-December of 1987 the Petitioner moved to compel and sanction the Respondent for evasion of discovery. The Court ordered Respondent to respond. Respondent presented no response to speak of.

Yet, the court denied Petitioner of his right to argue in the open court, and let interrogatories be unanswered.

Other courts, under similar circumstances, compel responses and sanction a party that obstructed the court orders.

OTHER COURTS COMPEL DOCUMENT PRODUCTION

Fifteen categories of the documents in possession of the Respondent were identified and the documents were ordered to be produced by the court at the Rule 26(f) conference of December 8, 1986. The order was ignored by Respondent whose Counsel, Wawzenski, perjured herself in the early 1988 claiming that the documents could not be located. She had been given the depositories of the documents in question. Wawzenski willfully lied to the court. A few relatively unimportant documents from the collection were produced much later, in 1991, indicating that they could have been located in 1987, thus confirming Wawzenski's perjury.

Petitioner submitted his affidavit proving that the documents were in Respondent's possession and demanding a Rule 26(f) conference and an open court argument. This was denied by the Hon. Kocoras.

Other courts, under similar circumstances, compel the document production, sanction a party that obstructed the court order, and hold the Rule 26(f) conferences to establish a schedule of the document production.

OTHER COURTS DO NOT QUASH SUBPOENAS

One of the two key witnesses, Mr. Maura, was subpoened and ordered to bring documents in his possession and relevant tangible things to the site of his deposition (in the Summer of 1990). Mr. Maura never denied that he actually was in the possession of certain documents. Yet, the court quashed the subpoena thus reducing a would be deposition to a travesty. As a result, Petitioner's Counsel resigned, and the deposition had to be postponed.

Other courts, in accordance with the F.R.C.P., do not quash subpoenas of key witnesses without a good reason.

OTHER COURTS ALLOW WITNESS' EXAMINATION

On December 8, 1986, the district court allowed examination of seven witnesses by Petitioner (two key witnesses and 5 secondary) in this action. Because of the resignation of the counsel, Respondent's frivolous motions to dismiss, and Respondent's refusal to cooperate in the discovery, the first day of the first deposition of a secondary witness was done only in July, 1988. The witness, Mr. Denton, admitted possession of unproduced important documents, and promised to timely produce these documents. He never did, and the court acquiesced.

Instead, Petitioner's agent, Wolf, was corrupted, the deposition site was unlawfully and secretly changed, and a court reporter was substituted by Denton, Shomaker, Mullins, and Kinney for the second day of the deposition (January, 1989).

The Maura deposition originally scheduled for the Summer of 1990 was denied after his subpoena was quashed. Instead, on Respondent's motion, an examination of Mr. Gogol was granted and continued. The witness was never found; clearly, the Respondent with acuqiescence of the Court simply obstructed depositions of the key witnesses Messrs. Arndt and Maura.

Depositions of Arndt and Shomaker could not be done in the fall of 1990 because Respondent's Counsel refused to submit their availability dates stating only that they were abroad on the U.S. business.

In January of 1991, on Respondent's motion, Shomaker's examination was scheduled first, to be followed by depositions of Maura and Arndt.

Then Respondent several times moved for continuation

of Shomaker's deposition. All these motions were granted by the court, however, Petitioner's motions to continue related depositions of Maura and Arndt were not granted.

Court's statement that Petitioner had not examined witnesses because he did not want to, was absolutely baseless.

Thus, in this action the court did not allow examination of a single key witness. Furthermore, the Respondent presented in his version of the FPTO a list of witnesses to be called to the trial, and none of these five or so witnesses has been examined by Petitioner.

A Sitting Judge, the Hon. Bua ruled that depositions were to be done before the preparation of the FPTO. Yet the Hon. Kocoras did not allow depositions.

Other courts allow deposition of key witnesses, in many instances even after an FPTO has been submitted. When a party to a lawsuit discloses witnesses it intends to call to the trial, the opposing party, especially when unfamiliar with these witnesses, may, as a rule, examine such witnesses.

The Hon. Kocoras did not allow examination of several such witnesses nor did he allow an oral argument to question his order.

If the Appellate Court Order is allowed to stand, the implications for the American judicial system will be detrimental. A Judge will be able to avert, in the most arbitrary and capricious manner, an examination of any witness.

OTHER COURTS SANCTION FOR PERJURY AND CORRUPTION

Respondent's counselors committed several acts of felony subject to Rule 60, F.R.C.P.

In October, 1986, Wawzenski forged the transcripts of Petitioner's deposition. When Petitioner moved for a correction, he was promised that Wawzenski would not forge

more documents.

Yet, Wawzenski immediately created an "errorr" in a minute order of January 29, 1987, inserting a false statement that the discovery was closed. This was corrected on December 11, 1987.

The disgusting practice of drafting *all* minute orders by the AUSA, not by the court, the practice totally alien to the FRCP, the real orgy of explicit and implicit forgeries, continued under the next counselors, notably, under Kinney.

On several occasions thus created "errors" were corrected. Significantly, the lower court took no action to prevent further "errors" thus reducing the lawsuit to a travesty.

Respondent's counselors committed several perjuries.

Wawzenski submitted an affidavit stating that she had a conference with a *pro se* Respondent, and that she produced documents. Both statements were perjuries.

The court denied Petitioner his right to confront the perjuror in the open court.

Kinney willfully stated before the court that the Petitioner had told him that the Petitioner would not go to the trial. He was lieing, and this was done in absense of the Petitioner for an unavoidable reason at the hearing concerning the dismissal of the case.

The Hon. Kocoras dismissed the case based on the totally perjurous hearsay.

The same Kinney, with the full knowledge of Wawzenski (who was in charge of the Civil Department), Valucas, and Foreman (AUSA) corrupted Mr. Wolf, Petitioner's Agent, retained to help with examination of witnesses. Although Kinney's attempts to install Wolf as Petitioner's Counsel failed miserably, the Court willingly entertained Kinney's efforts and provided a clear *prima facie* evidence that the Hon. Kocoras was aware of illegal activities of

Kinney and of the AUSA office in Chicago.

Petitioner demanded a full investigation of Kinney's actions including his secret and illegal transferring of a site of a deposition into a "backroom of a bar in Washington." The Hon. Kocoras refused.

Other courts do not tolerate perjury, forgery, and corruption. Other courts do investigate complaints pursuant to the Rule 60.

A failure to remand the case to a lower court that stained the honor and dignity of the juridical system would have extremely serious implications.

OTHER COURTS DO NOT PREMATURELY DENY PLAINTIFF A TRIAL

The district court erred by early dismissing the case thus denying Petitioner a trial, and the Appellate Court erred in affirming.

The first stated reason for dismissal was that only the Respondent's version of the FPTO was filed with the court. Although the Local Rule stipulates that the main burden in preparation of an FPTO rests with Plaintiff, this is not a *sine non qua* requirement. Precedents when an FPTO prepared by a defendant alone was used in a trial, are abundant. Significantly, defendant never sent draft of his version of FPTO to Plaintiff for review or input and correction in defiance of the Rule.

Besides, the court knew that a discovery was needed to prepare an FPTO which was reflected in the court order of May 29, 1991, that granted Plaintiff 40 days upon completion of depositions to prepare the FPTO. This order was changed in an arbitrary and capricious manner on October 24, 1991, by the Hon. Kocoras.

The Local Rules do not require more than one version of the Final Pretrial Order, and the only submitted FPTO version becomes the Final Pretrial Order by default.

The second stated reason for dismissal was Petitioner's "contumacious" behavior. Needless to say that during the whole six years of pretrial proceedings Petitioner missed no hearings nor showed disrespect of the court or disobeyd orders that he could possibly fulfill.

The Petitioner was sanctioned by the Magistrate Rosemond *in absentia* for allegedly selecting as a deposition site a "back room of a bar in Washington." Petitioner's motion for Oral Argument was denied.

The Magistrate most certainly knew that it was, in fact, the Respondent who illegally and secretly changed the prearranged deposition site.

The Hon. Kocoras affirmed Rosemond's "Order" with the full knowledge of Kinney's felonious activities, and never held an oral argument on the subject, although he never personally asserted that Petitioner's behavior was or had ever been"contumacious."

Respondent, evidently fearing the publicity, never attempted to collect the fine imposed on Petitioner.

Thus, the myth of Petitioner's "contumacious" behavior became dead at its birth.

Whether the Appellate Court knew that the myth was created to cover-up the Chicago AUSA felonious activities or the Hon. Appellate Judges did not familiarize themselves with the facts, the myth remains dead. The Appellate Court's repeated use of the myth proves only the magnitude of the Court's errors.

The third stated reason for dismissal was an assertion that Petitioner would not go to the trial.

In fact, the Court was aware that Plaintiff <u>was</u> going to trial because the Hon. Kocoras at the hearing of his recusal motion promised that the question of concealed documents and denied depositions would be permitted to raise during the trial.

Under such or similar circumstances other courts proceed, call a pretrial conference and adhere to the trial schedule. Typical circumstances when a dismissal is justified can be found in the experience of the Seventh Circuit itself. See *Pyramid Energy, LTD. v. Heyl & Patterson,Inc.*, 869 F.2d 1058, 1062 (7th Cir. 1989).

In *Pyramid* the court gave Plaintiff a total of six extensions involving a delay of over a year. The Plaintiff **failed to file the FPTO, yet the party received the trial date.** On the trial date,

> " ...Pyramid's president and vice-president appeared without a counsel; they stated that Pyramid was not ready for trial... Heyl, by its counsel... stated that it was prepared for trial and objected to continuance, submitting a Motion to Dismiss with prejudice for Pyramid's failure to comply with the court's pre-trial orders and **failure to be prepared to proceed on the trial date."**

As we see, the failure to submit an FPTO in this action did not preclude Plaintiff from receiving a trial. He could proceed if he wished to proceed.

It was a combination of **both** factors that caused the court to dismiss in *Pyramid*. A dismissal under the circumstances when at least one version of an FPTO has been filed and both parties were willing to go to the trial **is unprecedented.**

In the present action the Lower Court knew that Plaintiff wished to proceed with the trial, and if the court had any doubts, the Hon. Kocoras could have convinced himself by asking the Petitioner directly.

The transcripts of the proceedings before the Hon. Kocoras on December 12, 1991, which resulted in the dismissal, show that the Court made inquiries on the subject with the **Respondent**, not with the Petitioner. Respondent's

Counsel, Kinney, perjured himself claiming that the Petitioner had told him that he (the Petitioner) would not go to the trial.

Whether the Hon. Kocoras believed Kinney or the question-answer incidence was prearranged to "prove" that Petitioner did not wish to go to the trial, is immaterial. The Court should not have relied on hearsay, especially for an extremely important decision.

Other courts do not rely on hearsay when they can make a direct inquiry.

The District Court erred in premature denial of trial.

The Appellate Court ignored its own long held standard that " [a] dismissal with prejudice is a harsh sanction which should usually be employed only in extreme situations..."

Nothing even remotely resembling an extreme situation took place on December 12, 1991. The Petitioner could not appear in the court for a good unavoidable reason and timely moved for continuation which other courts always grant under such circumstances given Petitioner's past history of never missing a hearing or moving for continuation before.

The Court Order denying the continuation and dismissing the lawsuit, therefore, was arbitrary and capricious.

Whereas the Hon. Kocorases Final Order of December 12, 1991, is not surprising given a long history of his arbitrary and capricious orders, the Appellate Court's affirmation of the clearly erroneous order of the lower court is in error, and is nearsighted.

If the Appellate Court Order is allowed to stand, this would introduce a totally new standard for the case dismissal when a biased Judge would perform a prearranged question-answer stunt concerning an absent party, and then he would pretend that a hearsay creates an "extreme situa-

tion," a decisive factor for the dismissal. This would reduce a litigation to a travesty.

OTHER APPELLATE COURTS REVIEW PRESENTED QUESTIONS

The Appellate Court Order of March 10, 1993, is very short (2 pages of the BACKGROUND and DISCUSSION).

Of the total of nine paragraphfs of the BACKGROUND five contain important factual inaccuracies, and two present the opinionated statements of the District Court that are appealled from.

The bias and the philosophy of the Order can be established from the first sentence of the BACKGROUND:

"We need not detail the prolonged history of the district court's considerable efforts to bring this suit's pretrial status to a close over the past five years."

However, the gist of Petitioner's appeal was exactly to obtain a review by the Appellate Court of these "considerable efforts" undertaken by the district court to deprive the Petitioner of his right to examine documents and witnesses, the review that the Circuit Court has both the jurisdiction and the duty to perform.

The Petitioner complained to the Appellate Court in 1988 and in 1989 for these "considerable efforts." Four Petitioner's Counsels attempted to secure responses to interrogatories, document production, and witness' examination - only to fail and to resign.

Yet the Appellate Court Order, apparently, takes at face value the shameless lies of Wawzenski and Kinney that the documents have been produced, that Plaintiff chose not to take depositions, that Plaintiff did not want to go to trial, etc.

Or, really, has the Appellate Court for the Seventh Circuit been deceived and has made innocent errors?

The latest Order is the last in a series of orders by the same circuit judges which all show a tendency to put the US Government, and specifically, the Nuclear Regulatory Commission and the former AUSA in Chicago above the law to the benefit of the nuclear power industry and the Commonwealth Edison Co.

The Appellate Court presented the DISCUSSION consisting of 3 paragraphs none of them addressing questions presented for the review.

In the first paragraph the Court reveals that it found nothing that would indicate any bias or any abuse of discretion on the part of the district court.

However, Petitioner's Brief and the record clearly indicate that the district court was simply a servant of the AUSA in this action. Not only all Minute Orders of the Hon. Kocoras were drafted by AUSA or NRC with all the "errors" that had to be "corrected" by the court on the motion, the court entertained the illegal attempts of the Respondent to install the corrupt Petitioner's Agent as his Counsel, the Court granted numerous continuations of Respondent's demands for deposition that were designed solely to derail Petitioner's requested depositions, the Court even quashed a subpoena of a key witness without any good reason.

The Circuit Judges' "findings" proved that they erred in not considering the evidence. If the Appellate Court Order is allowed to stand, this would create an extremely dangerous precedent when the true facts are willfully ignored by a circuit court, and when clear lies are misrepresented as facts. For example, the third paragraph of the DISCUSSION claims that the "record reveals plaintiff's repeated disregard for court orders and related contumacious conduct" whereas, as discussed above, nothing that could be construed as such has ever been a subject of an oral

argument in the open court despite numerous Petitioner's requests and motions.

CONCLUSION

The United States Court of Appeals for the Seventh Circuit in its Unpublished Order did not address questions presented for review.

The Order presented the biased BACKGROUND and DISCUSSION containing untrue "facts" and their interpretations.

The Court erred in not addressing issues presented for review and in affirming the biased order of a Lower Court.

Other courts have different standards based on the Federal Rules of Civil Procedure and on the Rules of Appellate Procedure.

The Seventh Circuit's deviations from the standards of other courts are extremely dangerous. They are incompatible with the spirit and letter of the U.S. Constitution.

Under the pressure of conspirators resisting an adequate testing of nuclear containments from the AUSA, NRC, and Commonwealth Edison Co., Petitioner has been deprived of all his discovery rights, and the case was prematurely dismissed solely because the Petitioner blew a whistle for fraudulent and faulty nuclear containment testing.

The conspirators from the AUSA and the NRC committed acts of corruption, lied to the U.S. Congress, purjered themselves, and committed serious violations of the Rules and of the ethical conduct. The Seventh Circuit Court's Order, the last in a series of related orders, vindicates these conspirators.

If the Order stands, then the parties to a lawsuit would be free from obligations to respond to interrogatories, to produce the documents, to take and give depositions.

The extremely dangerous and erroneous Order should not stand, the writ should be granted, and the case should be remanded to the lower court.

Respectfully submitted,

Z. Reytblatt

Appendix A

United States District Court

NORTHERN DISTRICT OF ILLINOIS

Eastern Division

Zinovy Reytblatt

JUDGMENT IN A CIVIL CASE

v.

U.S. Nuclear Regulatory Commission

case number: 86 C 385

DOCKETED
DEC 13 1991

[ ] Jury Verdict. This action came before the Court for a trial by jury.

The issues have been tried and jury has rendered its verdict

[X] Decision by Court. This action came to hearing before the Court. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that this cause is hereby dismissed with prejudice. Plaintiff to take nothing. Final judgment is hereby entered.

December 12, 1991 H. STUART CUNNINGHAM
Clerk

Appendix B

United States Court Of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

unpublished order
not to be cited
per circuit rule 53

Submitted February 16, 1992

Decided March 10 1993.[1]

Before

Hon. WALTER J. CUMMINGS, Circuit Judge

Hon. RICHARD D. CUDAHY, Circuit Judge

Hon. DANIEL A. MANION, Circuit Judge

ZINOVY V. REYTBLATT,

Plaintiff-Apellant,

No 92-1029 **v.**

UNITED STATES OF AMERICA,

Defendant-Appellee.

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[1] After preliminary examination of the briefs the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." See Fed. R. App. P. 34(a); Circuit Rule 34(f). Appellant has filed such a statement and requested oral argument. Upon consideration of that statement, the briefs, and the record, the request for oral argument is denied and the appeal is submitted on the briefs and record.

ORDER

Plaintiff challenges the district court's dismissal of his suit for failure to prosecute, Fed R. Civ. P. 41(b), contending that the district court erred on the basis that it was "biased in favor of defendant." We affirm.

BACKGROUND

We need not detail the prolonged history of the district court's considerable efforts to bring this suit's pretrial status to a close over the past five years. It is enough to note the following: In January 1986, plaintiff filed the suit[2], which basically alleges that defendant[3] misappropriated plaintiff's Integrated Leak Rate Testing Methodology, which was designed to assure that leakage of radioactive materials from nuclear power plant containment systems was within legal limits.

In January 1988, Judge McGarr ordered all document production closed, noting in his opinion that the case was "a two-year orgy of contentious discovery, with no perceptible progress towards resolution of the issues." Judge McGarr also detailed plaintiff's unjustified, arbitrary requests to depose various NRC personnel, and granted the defendant's motion for a protective order requiring plaintiff to retain counsel to conduct the depositions.

In August 1988, Judge Kocoras ordered document discovery closed for all purposes, finding that there hadbeen "ample opportunity as well as an abundance of documents

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[2] Plaintiff, a college professor of mathematics, appeared *pro se* intermittenly, and was also represented by five different attorneys at various times throughout the pretrial litigation. Plaintiff appears *pro se* in this court.

[3] In April 1986, plaintiff filed an amended complaint naming the United States as the only defendant

apparently disclosed prior to my getting into the case and we do not need to revisit that."

In October 1989, Magistrate Judge Rosemond sanctioned plaintiff for his "contumacios disregard to the discoveryorders" of the district judges after plaintiff improperly attempted to conduct a *pro se* deposition of an NRC employee. At various times in 1989 and 1990, plaintiff was ordered to conduct certain depositions he had requested, by certain dates. Each time, plaintiff chose not to take the depositions.

In October 1990, Judge Kocoras ruled that all discovery was closed. in January 1991, however, at plaintiff's request, the court permitted plaintiff to depose two people by a certain date. Plaintiff again chose not to take the depositions. In May 1991, defendant filed a proposed pretrial order pursuant to local rule 5.00. Plaintiff had declined to confer with defendant about the order, or to submit a draft. Nevertheless, on May 29, 1991, plaintiff's motion for leave to file a belated proposed pretrial order was granted.

On October 24, 1991, plaintiff argued that a pretrial order should not be entered, and a trial date should not be set until more depositions could be taken. The court ordered plaintiff to file a proposed pretrial order within 30 days. The court instructed the court clerk to provide plaintiff with the correct pretrial order form. The court warned: "If you fail to submit the pretrial order by [November 26, 1991], I am going to dismiss your case with prejudice."

On November 5, 1991, plaintiff again asked the district court for additional disovery, including interrogatories, production of documents and depositions. The court noted that discovery had been closed for some time, and again warned: "[M]y prior order will stand, both in terms of deadlines for the submission of the pretrial order and the

trial date."

On November 25, 1991, plaintiff appeared in court and requested the judge's recusal. The court denied the motion, repeating the warning that all previously ordered deadlines were still in force. On December 12, 1991, the court granted defendant's motion to dismiss the case with prejudice.

On December 19, 1991, the court denied plaintiff's motion to reconsider the dismissal order. Plaintiff again argued that he was not prepared to file a proposed pretrial order until he received the additional discovery. On December 23, 1991, the district court denied plaintiff's motion for additional findings of fact. On January 3, 1992, plaintiff filed a timely notice of appeal.

DISCUSSION

Plaintiff contends on appeal that the district court was biased in favor of defendant. We find nothing in the record that would indicate any bias, or any abuse of discretion. Under Federal Rule of Civil Procedure 41(b), the district court may dismiss a case for failure to prosecute or failure to comply with court rules or orders. Fed.R.Civ.P.41(b). That decision wll not be disturbed absent an abuse of discretion. *Daniels v. Brennan*, 887 F.2d 783, 785 (7th Cir. 1989); *Patterson v. Coca-Cola Bottling Co.*, 852 F.2d 280, 283 (7th Cir. 1988).

Under local rule 5.00 of the district court, parties to a civil case must jointly file a proposed final pretrial order. For five years, the district court made every effort to accomodate plaintiff's discovery requests, and to allow for plaintiff's intermittent *pro se* status. Discovery was closed, and then re-opened for plaintiff's benefit several times. Plaintiff rarely took advantage of those second, third or fourth opportunities to seek the requested discovery or take the

requested depositions. The court went to great lengths t
explain the consequences of violating court orders, repea
edly warning plaintiff that if he did not file a pretrial orde
(permitting him to forego the requirement that he confe
with defendant and file a joint order), the case would be di
missed with prejudice. Even after the dismissal of the cas
plaintiff refused to file a pretrial order, instead continuin
to demand additional discovery.

We acknowledge that the pleadings of *pro se* litigant
should be construed liberally. Even with that liberal cor
struction, however, we can not say the district court abuse
its discretion in dismissing this case. The record reveal
Plaintiff's repeated disregard for court orders and relate
contumacious conduct. "A trial court is entitled to say
under proper circumstances, that enough is enough, an
less severe sanstions than dismissal need not be impose
where the record of dilatory conduct is clear." *Daniels*
Brennan, 887 F.2d at 788, quoting *Pyramid Energy, Ltd*
v. Heyl & Patterson, Inc., 869 F.2d 1058, 1062 (7th Cir
1989).

Accordingly, the judgment of the district court is AF
FIRMED.